IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-10-2005

CORAM :

THE HONOURABLE MR. MARKANDEY KATJU, CHIEF JUSTICE
and
THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 1676 & 3345 of 2001
-O-

WP No. 1676 of 2001

G. Saravanan .. Petitioner

Versus

1. The District Employment Officer
   Krishnagiri
   Dharmapuri District

2. The Managing Director
   Dharmapuri District Central
   Co-operative Bank
   Dharmapuri .. Respondents

WP No. 3345 of 2001

K.M. Dhanalakshmi .. Petitioner

Versus

1. The Government of Tamil Nadu
   rep. by its Secretary to Government
   Co-operative, Food and Consumer
   Protection Department
   Fort St. George
   Chennai - 600 009

2. The Registrar of Co-operative
   Societies
   Kilpauk
   Chennai - 600 010

3. The Managing Director
   Dharmapuri District Co-operative Bank
   Dharmapuri - 636 701

4. The District Employment Officer
   Krishnagiri
   Dharmapuri District .. Respondents

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Petitions under Article 226 of The Constitution of India praying for a Writ of Mandamus as stated therein.

For Petitioners : Mr. R. Thamaraiselvan in both the Writ Petition

For Respondents : Mr. V. Ragupathy, Govt. Pleader for R1 in WP 1676/2001 and for RR1, 2 & 4 in WP 3345/2001

Mr. K.M. Srirangan for R2 in WP 1676/2001 FOR R3 in WP 3345/2001

COMMON ORDER

A. KULASEKARAN, J

The prayer in WP No. 1676 of 2001 is for a Writ of Mandamus directing the first respondent to sponsor the name of the petitioner herein - Registration No. 5538/1985 to the second respondent for appointment to the post of Assistant in the Dharmapuri District Central Co-operative Bank Limited, Dharmapuri by considering his seniority in registration with the Employment Exchange, Krishnagiri.

2. WP No. 3345 of 2001 has been filed praying for a Writ of Mandamus forbearing the third respondent from in any manner appointing the candidates for the post of Assistants pursuant to the publication dated 22-11-2000 without considering the petitioner's claim for appointment based on petitioner's seniority in the employment exchange and previous experience.

3. The case of the petitioner in WP No. 1676 of 2001 is that he had completed his higher secondary course in April 1984 and also underwent General basic course in Nachiappa Co-operative Training Institute, Salem and passed the Diploma Course in Co-operation conducted by the Tamil Nadu Co-operative Union, Chennai; that thereafter, the petitioner registered his name in the District Employment Exchange, Krishnagiri on 12-07-1985 under Registration No. 5538/1985; that the petitioner's name was sponsored for employment in Co-operative Housing Society, Krishnagiri by the first respondent on 07-01-1988; that the petitioner has also attended the interview, but he was not selected; that again, his name was sponsored by the first respondent and he attended another interview on 02-04-1983 in Primary Agricultural Co-operative Bank, but he was not selected; that the petitioner learnt that second respondent herein has requested the first respondent to send eligible candidates for appointment to the post of Assistant by direct recruitment in their Bank and the first respondent also sponsored the names of 69 candidates on 09-01-2001, but his name was not included therein; that the persons who were sponsored by the

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first respondent are juniors to the petitioner in the matter of registration of their names in the employment exchange; that the petitioner has also made representation dated 17-01-2001 to the first respondent and requested to sponsor his name; that though the first respondent sent a reply by stating that his name will be sponsored, but so far, his name was not sponsored, hence the present writ petition.

4. The case of the petitioner in WP No. 3345 of 2001 is that she had completed her higher secondary examination in 1982, Diploma in Co-operative in 1985 and B.Com Decree in May 1989; that she had also completed Co-operative Supervisor's Training Course in 1985; that she registered her name with the fourth respondent and her name was sponsored to the third respondent in respect of the interview held on 03-06-1998 for the recruitment of Assistant, but the interview was not held on that date; thereafter her name was sponsored for interview to the post of Junior Assistant in Dharmapuri Town Co-operative Bank on 17-06-1998 and the same was also not conducted; that the third respondent issued an advertisement in Tamil newspaper on 22-11-2000 fixing the age limit of the candidates, with the result, though the petitioner is senior as per registration, she was not found eligible and her name was not included; that the petitioner has submitted representations on 05-06-2000 and 23-11-2000 to the third respondent, but the same were not disposed of till date, hence, the present writ petition.

5. For the sake of convenience, the writ petitioners shall hereinafter be referred to as 'Petitioners', Dharmapuri District Central Co-operative Bank as 'Co-operative Societies' and the District Employment Officer, Krishnagiri as 'employment exchange'.

6. The case of the respondent/Dharmapuri District Central Co-operative Bank is that the petitioners cannot seek for a direction to appoint them in their bank based on their seniority in registration with employment exchange by issuing Mandamus is devoid of any vested or accrued fundamental right is not at all maintainable; that the seniority in employment exchange got nothing to do with the selection process; that filling up the post in the bank depends on several factors and it would arise as and when the government decides as a matter of policy; that the selection process involve many parameters which were meticulously followed; that the petitioners were not selected as they are found not fit; that as per by-law III of Co-operative Societies dated 24-07-1997, cut off date was fixed as 01-10-2000 to determine the age of the candidates eligible to participate in the interview, which cannot be stated as an arbitary act.

7. The other respondents have also taken similar stand, hence, the same is not discussed elaborately.

8. For issuance of Mandamus, the petitioners must show that there is a statutory duty imposed upon the respondents and there is a failure on their part to discharge that statutory duty. The Honourable Supreme Court in the below mentioned cases held thus;-

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i) (Dr. Rai Shivendra Bahadur vs. Governing Body of the Nalanda

College, Bihar Sharif and others) AIR 1962 Supreme Court 1210 wherein in para-5, it was held thus:-

> "5.....In order that mandamus may issue to compel the respondents to do something it must be shown that the Statutes impose a legal duty and the appellant has a legal right under the Statutes to enforce its performance. It is, however, wholly unnecessary to go into or decide this question or to decide whether the Statues impose on the Governing Body of the College a duty which can be enforced by a writ of mandamus because assuming that the contention of the appellant is right that the College is a public body and it has to perform a public duty in the appointment of a Principal, it has not been shown that there is any right in the appellant which can be enforced by mandamus. According to the Statutes all appointments of teachers and staff have to be made by the Governing Body and no person can be appointed, removed or demoted except in accordance with Rules but the appellant has not shown that he has any right entitling him to get an order for appointment or reinstatement. Our attention has not been drawn to any article in the Statutes by which the appellant has a right to be appointed or reinstated and if he has not that right he cannot come to court and ask for a writ to issue. It is therefore not necessary to go into any other question."

ii) (Lekhraj Sathramdas lalvani vs. N.M.Shah, Deputy Custodian cum Managing Officer, Bombay and others) AIR 1966 Supreme Court 334 wherein in para-5, it was held thus:-

> "5......The reason is that a writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdictions..... In our opinion, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Article 226 of the Constitution....."

iii) (Dr. Umakant Saran v. State of Bihar and others) AIR 1973 SC 964 wherein in para-10 it was held thus:-

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> "10. This court has pointed out in Dr.Raj Shivendra Bahadur v. The Governing Body of the

Nalanda College. 1962(2) Supp SCR 144 = (AIR 1962 SC 1210) that in order that mandamus may issue to compel the authorities to do something it must be shown that the statute imposes a legal duty and the aggrieved party had a legal right under the statute to enforce its performance. It is contended on behalf of the State that apart from the fact that respondents 5 and 6 had been validly appointed in accordance with the practice followed by the Government, Dr.Saran who was not eligible for consideration for appointment at the time had no right to question the appointments since he was not aggrieved."

9. In this case, the petitioners sought for issuance of Writ of Mandamus to direct the employment exchange to send their names as per seniority in registration and to further direct the co-operative bank to appoint them in a particular post. It is averred by the petitioners that on earlier occasions, their names were sponsored by the employment exchange and they attended the interviews conducted by the co-operative societies, but were not selected, subsequently, vacancies arose in the co-operative societies but due to ban by the Government, appointments were not made and even after lifting of ban, co-operative societies failed to proceed immediately for recruitment, later, they became ineligible pursuant to the notification dated 22-11-2000 published in newspapers by co-operative society, hence juniors who have satisfied the conditions of the said notification dated 22-11-2000 were sponsored by the employment exchange.

10. It is well settled that a writ of mandamus is not a writ of course or a writ of right, but is, as a rule, discretionary. There must be a judicially enforceable right, for the enforcement of which a mandamus will lie. In the decision reported in (The Municipal Corporation for Greater Bombay and another vs. The Advance Builders (India) Pvt Ltd and others) AIR 1972 SC 793 in para-13 it was held thus:-

"13. It was, however, contended by the learned Attorney-General that, after all, a writ of mandamus is not a writ of course or a writ of right but is, as a rule, a matter for the discretion of the court. That is undoubtedly the case. It is pointed out by Lord Hathorely in Queen v. Church Wardens of All saints, Wigan (1875-76) 1 AC 611 that upon a prerogative writ there may arise many matters of discretion which may induce the Judges to withhold the grant of it - matters connected with delay, or possibly with the conduct of the parties; but, as further pointed out by His Lordship, when the Judges have exercised their discretion in directing that which is in itself lawful to be done, no other Court can question that discretion in so directing...."

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11. To issue Mandamus, there must be a judicially enforceable

right, for the enforcement of which, Mandamus will lie. The legal right to enforce the performance of a duty must be in the petitioner himself. In general, therefore, the Court will only enforce the performance of a statutory duty by public bodies on application by a person, who can show that he has himself a legal right to insist on such performance. Followed (State of Kerala vs. A. Lakshmikutty and others) AIR 1987 SC 331 wherein in para-33 it was held thus;-

> "33 .....It is well settled that a writ of mandamus is not a writ of course or a writ of right, but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance....."

12. Hence, we hold that the Mandamus prayed for by the petitioners cannot be issued as they have no vested or enforceable legal right. Admittedly, there is no statutory duty imposed upon the respondents, particularly the co-operative society and employment exchange or failure on their part to discharge that statutory duty.

13. The petitioners herein have not challenged their non-selection. The argument that for certain periods ban was imposed by the Government and if there had been selection during that period or immediately after lifting the ban, they may have been appointed is untenable. In this context, it is appropriate to cite the decision reported (State of Orissa and others v. Bhikari Charan Khuntia and others) AIR 2003 Supreme Court 4588 wherein in para 8 and 9, it was held thus:-

> "8. As was observed by this Court in Govt. of Orissa, through Secretary, Commerce and Transport Department, Bhubaneswar v. Haraprasad Das and others 1998 (1) SCC 487, whether to fill up or not to fill up a post, is a policy decision and unless it is arbitrary, the High Court or the Tribunal has no jurisdiction to interfere with such decision of the Government and direct it to make further appointments.....
>
> 9. ..... The reasons which persuaded the Government to absorb those who were rendered surplus on account of abolition of octroi and the decision taken to abolish a substantial number of posts to minimize expenditure cannot be said to be either extraneous or irrelevant for the purpose, to be ignored by the Court in according relief to the writ petitioners....

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In view of the said judgment, it is not open to the petitioners to question the ban imposed by the Government or compel the authorities to initiate recruitment proceedings.

14. In so far as the averment relating to fixation of age is concerned, it is well settled that the authorities are entitled to fix the cut off date. The Honourable Supreme Court in the decision rendered in (Bhupinderpal Singh v. State of Punjab AIR 2000 SC 2015) in para-13 held thus:-

> 13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 JT (SC) 99; A.P. Public Service Commission v. B. Sarat Chandra (1990) 4 Serv LR 235 (SC); District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi (1990) 4 Serv LR 237 (SC); Mrs. Rekha Chaturvedi v. University of Rajasthan (1993) 1 JT (SC) 220: (1993) AIR SCW 1488: 1993 Lab IC 1250; Dr. M.V. Nair v. Union of India (1993) 2 SCC 429: (1993 AIR SCW 1412) 1993 Lab IC 1111 and U.P. Public Service Commission U.P., Allahabad v. Alpana (1994) 1 JT (SC) 94; (1994) AIR SCW 2861), the High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the Rules, then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed, then the eligibility criteria can be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice."

15. When the petitioners herein have not satisfied the conditions including the age, they are not eligible to appear for interview. Hence not sponsoring their name by the employment exchange is perfectly valid.

16. Though in the affidavit, the petitioners have not canvassed the applicability or non-applicability of the Employment Exchanges (compulsory notification of vacancies) Act 1959, in the arguments, it is canvassed that the co-operative societies have not notified the vacancy to employment exchange. The said plea is factually incorrect

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since the petitioners have admitted in their affidavit that the employment exchange have sponsored certain number of candidates on the request made by the co-operative society.

17. The averments that the representations submitted by the petitioners were not disposed of by the Co-operative Society is concerned, it is not incumbent on the part of the society to dispose of the same when there is no legal obligation cast upon them. For the said reason, we hold that the co-operative society have not committed any violation of the principles of natural justice, which is required to be followed as per statute. Similarly, the employment exchange cannot be blamed for not sponsoring the name of the petitioners.

18. In view of the above discussions, we hold that there is no merit in the writ petitions. Hence, the writ petitions are dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to
   The Government of Tamil Nadu
   Co-operative, Food and Consumer
   Protection Department
   Fort St. George
   Chennai - 600 009

2. The Registrar of Co-operative
   Societies
   Kilpauk
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3. The Managing Director
   Dharmapuri District Central Co-operative Bank
   Dharmapuri - 636 701

4. The District Employment Officer
   Krishnagiri
   Dharmapuri District

+1cc to Mr.R.Thamarai Selvan Advocate Sr 41474

+2ccs to K.M.Srirangan Advocate Sr 41359,41358

AKM (CO)
km/7.10.

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